



# United States Department of the Interior

OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT  
SUITE 310  
625 SILVER AVENUE, S.W.  
ALBUQUERQUE, NEW MEXICO 87102



In Reply Refer To:

April 23, 1992

Lowell P. Braxton, Associate Director  
Division of Oil, Gas and Mining  
Department of Natural Resources  
3 Triad Center, Suite 350  
355 West North Temple  
Salt Lake City, Utah 84180

RECEIVED

APR 27 1992

DIVISION OF  
OIL GAS & MINING

Re: Response to Uncited Violations, Co-Op Mining Company, Bear Canyon Mine,  
ACT/015/025

Dear Mr. Braxton:

Your correspondence of April 16, 1992, regarding the above-noted subject matter, requests the Albuquerque Field Office (AFO) delete the observed violations AFO believes to have existed at the time of the last State complete inspection (LSCI) from the oversight documents. You base your request on an agreement made during the November 6, 1991, meeting between Dr. Dianne Nielson and Deputy Director W. Hord Tipton.

In answer to your request, I refer you to the enclosed January 17, 1992, correspondence between the Deputy Director and Dr. Nielson. In this letter, the Deputy Director explains his intent that the "mutual misses" applies to a one-time concession to revise the 1991 Annual Evaluation Report and it would not be applicable to the 1992 evaluation year.

Sincerely,

Stephen G. Rathbun, Chief  
Inspection and Enforcement Branch  
Albuquerque Field Office

Enclosure

STP-27-14



United States Department of the Interior  
OFFICE OF SURFACE MINING  
Reclamation and Enforcement  
WASHINGTON, D.C. 20240

JAN 17 1992

Dr. Dianne R. Nielson, Director  
Division of Oil, Gas and Mining  
Department of Natural Resources  
3 Triad Center, Suite 350  
355 West North Temple  
Salt Lake City, Utah 84180-1203

Dear Dr. Nielson:

I am following up on our meeting of November 6 and 7, 1991, and your correspondence of December 6, 1991, about the account of that meeting. I want to clarify the Office of Surface Mining Reclamation and Enforcement's (OSM) expectations on those issues and set a schedule for completion of certain actions.

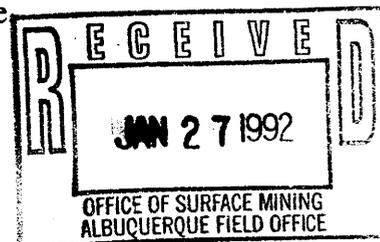
Access and Haul Roads

OSM, by Federal Register notice dated November 22, 1991, disapproved the main points of the State's proposed rules for regulating access and haul roads.

Your December 5, 1991, letter raises questions about the regulatory basis for permitting decisions. A policy will not be necessary if the Division of Oil, Gas and Mining (DOGM) makes permitting decisions consistent with the definition of "coal mining and reclamation operations" as well as other applicable provisions of the State program. At this time, there are no barriers to DOGM proceeding with permitting. Therefore, I am requesting that you make decisions regarding the Crandall Canyon, Deer Creek, and Wilberg mines by March 1, 1992. I am also asking that provide me a schedule by April 1, 1992, specifying permitting decision dates for other mines within the State.

Highwalls

At the November meeting, I clarified and modified certain requirements of my January 9, 1991, and July 18, 1991, "732 letters" and the November 14, 1992, issue letter from the Albuquerque Field Office (AFO) Director regarding the need to amend the State program to modify the exemption from highwall reclamation. In reference to your December 5, 1991, letter, the term "significantly," when applied to the length of retained highwall should be included in the amendment. OSM intends to discuss the limitations of this term in the preamble to the Federal Register notice.



OSM will also discuss implementation of the amended rule relative to the retroactive application of the referenced District Court ruling. Your comments on the pre-SMCRA exemption for continuously operating mines are correct. I am requesting that you formally submit a proposed amendment by May 1, 1992, to respond to the "732 letters" and issue letter, as modified at the meeting. Upon approval of the new rule by OSM, DOGM should review, within 6 months, all existing operations and revise the permits where highwall retention has been authorized under the existing program.

#### Failure to Cite Violations

AFO is reviewing your December 3, 1991, letter requesting revision of the last State complete inspection statistics. Appropriate changes will be made to the Annual Evaluation Report upon completion of the review. AFO has informed me that you are interpreting my agreement about "mutual misses" as applying to current OSM oversight inspections. My intent was that this concession would only be used for revising the 1991 Annual Report and would not be applicable to the 1992 evaluation year.

#### Permit Renewals

OSM remains concerned about DOGM's actions to continue mining operations beyond the expiration of the permit term where DOGM has deferred review of applications for renewal or has granted a renewal where extensive deficiencies exist with the renewal application. The description of the problem in the Annual Report will be revised to clarify OSM's concerns. A schedule needs to be developed to obtain complete and accurate renewal applications and to complete all renewals when due. Please provide me such a schedule by ~~June~~ <sup>March</sup> 1, 1992.

#### Applicant Violator System (AVS)

The Annual Report is being modified to redescribe the operational problems encountered. I understand that you have addressed the list of AVS maintenance deficiencies that was given to you at our meeting. There are no outstanding issues regarding DOGM's use of the AVS.

#### Permit Transfers

Appropriate changes are being made in the Annual Report's description of this problem. The December 9, 1991, Administrative Law Judge hearing was vacated, motions for summary judgement have been filed by all parties, and responses are due by January 21, 1992.

Dr. Dianne R. Nielson, Director

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Absent the legal opinion from Utah on your proposal, that would substantiate the State's position of having no authority to enforce or require containment of mining activities prior to State approval of transfer, sale, or assignment of permitting rights, OSM expects Utah to fully comply with the AVS Memorandum of Understanding. Please advise of the State's position by February 1, 1992.

Sincerely,

~~W. Hord Tipton~~

W. Hord Tipton  
Deputy Director  
Operations and Technical Services

bcc: OSM Subject  
OSM Reading (2)  
DD/OTS  
ADD/OTS  
✓ Robert Hagen, Director  
Albuquerque Field Office  
OSM:ADD/OTS:KParry:ac:208-2526:1/14/92